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July 7, 1955
Opinion No. 55-157

REQUESTED BY: Julian H. McClure, Deputy, Registrar
of Contractors, 39 East Jackson Street
Tucson, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General
ROBERT E. KERSTING, Special Assistant
Attorney General

QUESTIONS:

1. Can the holder of an A-5 excavating and grading license and an A-8 pipelines license legally bid and construct a water works improvement, wherein the excavating and pipeline work constitutes only an approximate 25% of the work to be done?
2. What classifications of licenses are required to legally bid and construct the aforementioned project?

CONCLUSIONS:

1. No.
2. Class A General Engineering, or a combination of Class B General Building, Heavy Construction, and Class A-8, 12 and 16.

Section 67-2323, ACA, 1939, entitled "Rules and Regulations", provides as follows:

"(A) The registrar may adopt rules and regulations necessary to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business and may limit the field and scope of the operations of a licensed contractor within any of the branches of the contracting business hereinabove described to those divisions thereof in which he is classified and qualified to engage. . ."

It is clear from the above that the Registrar of Contractors may classify and may limit the field and scope of the operations of licensed contractors within any of the branches of the contracting business. The statute relating to licensing requirements for contractors is a regulatory measure designed for the protection of the public against unscrupulous and unqualified persons purporting to have capacity, knowledge and the classification of a contractor. Northern vs. Elledge, 72 Ariz. 166. The applicable statutes and rules and regulations of the

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Registrar of Contractors thereunder provide for different qualifications, separate applications, and separate license fees for qualifying or classifying as a licensee in the various classifications of contracting.

Under the powers given by the above quoted statute to the Registrar of Contractors enabling the Registrar to limit the field and scope of the operations of a licensed contractor, the Legislature has seen fit to classify a General Engineering Contractor as a contractor whose principal contracting business is in connection with fixed works dealing with irrigation, drainage, water power, water supply, flood control, inland water ways, harbors, railroads, highways, tunnels, airports, airways, sewerage, and bridges. This classification is also set forth and provided for in Section 67-2304, Part B. ACA, 1939, as amended. Section 67-2318(a), ACA, 1939, as amended, which pertains to Completion Bonds, provides that a Surety Bond conditioned upon the completion of the contract entered into by a contractor must be posted on every contract by the contractor pursuant to the authority of his license. A completion Bond, which is posted for work to be done by the contractor outside his authority and in excess of the authority of his license, would therefore be improper.

The holder of an A-5 and an A-8 license (which is now classified as A-12 dealing with sewers, drains, and pipe laying) would only be licensed in excavating, grading, sewers, drains and pipe laying, which, from the information given to this office, would consist of only 25.5% of the work to be done on the City of Tucson Water Works Improvement Contract #18 in question.

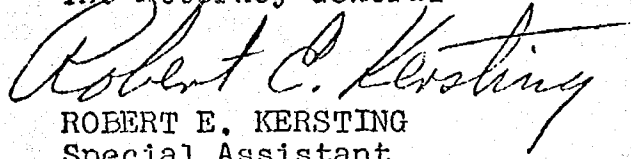
To legally and properly submit a bid on such Water Improvement Works, a duly licensed contractor would of necessity need more than an A-5 and an A-8 contracting license. Not only would it be improper for the holder of only an A-5 and an A-8 Contracting License to submit a bid or to purport to have the capacity to undertake such a project when in fact he has no such capacity, but to so act could very well subject such a contractor to the penalty provided by 67-2319, ACA, 1939, as amended. He would be acting in the capacity of a contractor within the meaning of this Article without the proper license, and such action would subject him to being tried on a misdemeanor charge. Upon conviction, he could be punished by a fine of not less than \$100.00 nor more than \$300.00, or by imprisonment not to exceed six months, or both.

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It is, therefore, the opinion of this office that a contractor, in order to legally and properly submit a bid, or to be able to contract for work to be done on a contract such as Contract No. 18 for the City of Tucson Water Works Improvements, and the equipping of Santa Cruz Wells, would of necessity have to hold either a Class A General Engineering Contractor's License, or a combination of a Class B General Building, Heavy Construction, and Class A-8, 12 and 16.

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